

# **ATTACHMENT 2**

# Toast Guest Terms of Service

Please note, the End User License Agreement is now located [here](#).

*Effective: November 2, 2023*

The following Terms of Service (“Terms” or “Terms of Service”) are a legal agreement between you (“you” or “your”) and **Toast**, Inc. (“Toast,” “we,” “us” or “our”) and govern your access to and use of any technology or services supplied by Toast, which include any websites, applications, digital ordering features, or any other ways Toast allows you to engage with us directly or through a Merchant that uses Toast (collectively, part of the “Services”). Our Services include, but are not limited to, our websites, including <https://www.pos.toasttab.com> (our “Websites”); the Toast TakeOut mobile application and related websites and services (“TakeOut App” or “App”); any digital ordering feature that Toast offers to Merchants, including a Merchant’s Online Ordering page and Order & Pay at the Table features (collectively “Digital Ordering”); and Payment Transactions facilitated on the Toast point of sale or via Toast’s scan to pay feature (“Point of Sale”); any features or services that allow you to join a waitlist or make a reservation at a Toast Merchant (“Toast Tables”); and other features, including those that allow Merchants to communicate with you. Capitalized terms used but not defined herein shall be as defined in the Merchant Agreement.

By accessing and/or using any of the Services, you agree to these Terms and any other policies or terms referenced within or posted throughout the Services, including but not limited to promotion terms, guidelines, as well as any rules or

terms applicable to particular features or promotions, which are hereby expressly incorporated into these Terms by reference. You also acknowledge that you have read and understand our privacy statement (the “**Privacy Statement**”).

FROM TIME TO TIME WE MAY UPDATE OR MODIFY THESE TERMS OF SERVICE IN OUR DISCRETION, AND WILL POST THE UPDATED TERMS TO <https://pos.toasttab.com/toast/terms-of-service>. SUCH UPDATES MAY BE REQUIRED IN ORDER TO REFLECT ENHANCEMENTS TO OUR SERVICES OR OUR WEBSITE. IF OUR CHANGES REDUCE YOUR RIGHTS OR INCREASE YOUR RESPONSIBILITIES, WE WILL USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE YOU WITH NOTICE BY EMAIL OR THROUGH THE TAKEOUT APP, IN ACCORDANCE WITH ANY NOTIFICATION PREFERENCES YOU HAVE PROVIDED. THE UPDATED TERMS OF SERVICE WILL BECOME EFFECTIVE AS OF THE EFFECTIVE DATE INDICATED IN THE TERMS OF SERVICE (“EFFECTIVE DATE”). ANY USE OF THE SERVICES AFTER THE EFFECTIVE DATE MEANS YOU HAVE ACCEPTED THE UPDATED TERMS. YOUR SOLE AND EXCLUSIVE REMEDY IN THE EVENT YOU DO NOT ACCEPT THE UPDATED TERMS OF SERVICE IS TO CEASE YOUR ACCESS TO AND USE OF THE SERVICES AND OUR WEBSITE.

These Terms include an **agreement to resolve disputes** by arbitration, which means that you and Toast waive the right to a trial by jury and agree to resolve any and all disputes through binding arbitration on an individual basis.

If you are an individual, you must be at least 18 years of age, a U.S. or Canadian resident, and legally capable of entering into contracts. If you are an entity, organization, or company, or acting on behalf of one, you represent and warrant that you are an authorized representative of such entity, and that you have the authority to and agree to bind it to these Terms. You represent that you will not use the Services, directly or indirectly, for any fraudulent undertakings. When you pay for a Purchase made through Point of Sale, the TakeOut App, or Digital Ordering, you authorize Toast to charge your credit or debit card or other permitted payment method (“Payment Method”) on behalf of the participating Merchant from which you are making a purchase.

## 1. Services

Toast provides a variety of technology products and services to Toast Merchants. Such Toast services enable dining customers (“Guests”) to interact with Toast Merchants in a variety of ways, including without limitation to (i) place orders for food, beverages, and other items provided by the Merchant (“Purchases”), (ii) join a waitlist or make a reservation at a Toast Merchant, (iii) communicate with a

Toast Merchant and vice versa (“Merchant Communications”). Additionally, Toast facilitates Purchases with Merchants and processes Guests’ payments to Merchants on behalf of each Merchant for those purchases with an eligible Payment Method (“Payment Transaction”).

### 1.1 Opening and Accessing a Toast Digital Ordering Account

When you use certain Toast services, you can choose whether you would like to register and create a Toast Account (hereinafter “Toast account” or “account”). If you create an account, you may save your credit or debit card and other personal information to make future orders faster and easier. You may make Purchases without creating an account, but you will not be able to save any personal information or preferences for future Purchases. In order to use the TakeOut App, you must download the app to your mobile device and create a Toast account. If you use the same email address for Digital Ordering, the TakeOut App, Toast Tables, and/or any Merchant loyalty programs, you will be registered for one account across those services.

When you create an account, we will ask you for certain personal information such as your name, mobile number, and email address, which will be stored with Toast to facilitate your transactions. You may also choose at any time to store Payment Method information, which can be used to pay for future Purchases. Information on how we collect, use, and protect the personal information you provide to us can be found in our [Privacy Statement](#). You agree to provide true, accurate current and complete information for your account registration, and you agree not to misrepresent your identity or your Payment Method information. It is your responsibility to keep the information you provide us up-to-date and accurate.

Toast may, in its sole discretion, terminate or refuse to approve registrations for Toast accounts with or without cause or notice, other than any notice required by Applicable Law and Rules. At this time, Toast Services are offered only to users residing in the United States, Canada, the United Kingdom and Ireland.

### 1.2 Confidentiality.

Only you have the right to access and use your account. You are responsible for ensuring that your login information and Payment Method information remain confidential at all times. Toast will assume that if your login or Payment Method are used to access the Services, the user has the legal authority to use such login or Payment Method. If you become aware of unauthorized use of your login or Payment Method, you agree to notify Toast immediately by email at

[help@toasttakeout.zendesk.com](mailto:help@toasttakeout.zendesk.com). You remain liable for any activity on your account until such time as Toast has been notified and has had an opportunity to take appropriate action.

### 1.3 Toast is not a Party to Payment Transactions

Purchases and Payment Transactions you make through our Services are transactions between you and the Merchant only, not with Toast or any of our affiliates. Toast is not the seller of any product or service offered by Merchants and is not a party to any Payment Transaction facilitated through the Services.

### 1.4 Using your Account

Once you have created your account, you will be able to make Purchases from Merchants through the Digital Ordering features and the TakeOut App. You can make changes to your account information by logging in on any Online Ordering page or within the App. You will also be able to view your recent Purchase and Payment Transaction history by logging in to your account.

You acknowledge and agree that all aspects of Purchases beyond the services that Toast provides, as well as all engagement and interactions between the Merchant and you, are solely the responsibility of the Merchant.


#### 1.4.1 Digital Ordering.

Digital Ordering features, including Online Ordering pages and Order & Pay at the Table, allow you to make Purchases from a participating Merchant using your own computer or mobile device. You can also manage your Toast account from any Online Ordering page by logging in. You can see your order history from that Merchant while you are logged in.

Some Digital Ordering features may allow you to place multiple orders as part of one Purchase. When you open a check, you may be required to provide payment information prior to completing your Purchase. By providing your payment information for pre-authorization, you agree to pay the total amount shown when you submit the final portion of your order. If you fail to complete payment for your Purchase, the Merchant may be able to charge your payment method after a certain amount of time has passed.

#### 1.4.2 Toast TakeOut App.

The TakeOut App is a mobile application that enables you to make Purchases from participating Merchants for pickup and/or delivery. If your workplace offers a Toast Drop location, you can make Purchases for delivery to your available Drop location via the Toast app. You can manage your Toast account by logging in, and can review your Purchase history within the app.

If you access or download the TakeOut App from the Apple App Store, you agree to [Apple's Licensed Application End User License Agreement](#) .

To use the TakeOut App, you must have a mobile device that is compatible with the App. Toast does not warrant that the App will be compatible with your mobile device. You may use mobile data in connection with the App and incur additional charges from your wireless provider for these services. You agree that you are solely responsible for such charges. Toast hereby grants you a non-exclusive, non-transferable, revocable license to use the App for one Digital Ordering Account on a mobile device owned or leased by you, for your personal use.

#### 1.4.3 Loyalty and Rewards.

Toast provides technology services that enable Merchants to offer loyalty and/or rewards programs to Guests. By enrolling in any loyalty program offered by Toast or by a Merchant using Toast's technology services, you expressly agree to these program terms.

You may enroll in a Merchant's loyalty program by signing up at the Merchant or while placing an order, subject to the Merchant's terms and conditions related to its loyalty program. Once you have enrolled, you may earn points when you make Purchases from Merchants, which can later be redeemed for discounts or other benefits. If you initiate a return, chargeback, or refund, points associated with the Purchase may be revoked. You may check your current rewards balance by clicking the link you receive when you sign up for a Merchant's loyalty program.

If you choose to enroll in a Merchant's loyalty program, you agree that the Merchant may contact you using the contact method(s) you provide with program information, offers, and other marketing and transactional communications. Any information shared by Toast with Merchants is subject to our Privacy Statement. Once a Merchant has received information you provide from Toast, the use and governance of that information will be managed by the Merchant, which may have separate privacy practices and policies. Toast does not authorize Merchants to send marketing messages to your mobile number. Merchants may not send

marketing messages to your mobile number unless you expressly authorize the Merchant to send you such messages.

Each Merchant is solely responsible for the operation and maintenance of its own loyalty program, including establishing the number of points that you may earn when you make Purchases, setting redemption thresholds, and determining how and when points may be redeemed for rewards. Merchants have the ability to modify their loyalty programs and/or to modify the points balance held by any individual Guest. Toast is not responsible for notifying you in the event that the Merchant changes any element of its loyalty program or ceases to offer a loyalty program. The Merchant is solely responsible for communicating program or points balance changes to you.

Points earned through any loyalty program offered by Toast or a Merchant using Toast have no cash value and cannot be transferred, redeemed, or sold for cash. Subject to notice requirements under Applicable Law and Rules, Toast reserves the right, in its sole discretion and at any time, to modify, suspend, terminate, revalue or cancel its own loyalty program and/or the technology services that enable Merchants to offer loyalty programs through Toast. In the event Toast terminates any loyalty program offered by Toast or by a Merchant, Toast will, in accordance with the Applicable Law and Rules, maintain records of Guest's loyalty points for one year following termination of the loyalty program in the event the loyalty program is reinstated within one year of termination. Toast reserves the right to adjudicate any discrepancies or disputes regarding rewards allocations or these program terms in its sole discretion and you agree to abide by any such adjudication.

### 1.5 Merchant Responsibilities

You hereby acknowledge and understand that each Merchant is solely responsible for all aspects of its own day-to-day operations, including provision of food and beverages (by any method, including through delivery), service, environment, and overall quality and accuracy.

#### 1.5.1 Compliance.

You hereby acknowledge and understand that each Merchant is solely responsible and liable for all marketing, selling, pricing, packaging, and provision of any products or services offered to Guests through the Services in compliance with all Applicable Law and Rules. Toast makes no representation or warranty regarding whether a Merchant holds any applicable permit, license, registration, or other

credential for its business; whether representations by a Merchant are true and accurate; or whether a Merchant complies with Applicable Law and Rules, and Toast is not responsible for the quality of the products or services provided by Merchants.

#### 1.5.2 Alcoholic Beverages.

Certain Merchants may hold alcoholic beverage licenses and sell alcoholic beverage products. The Merchant holding the alcoholic beverage license must approve your Purchase before the Purchase will be finalized, and only upon acceptance of the order by the Merchant will your Payment Method be charged. The portion of the funds charged to your Payment Method which pertains to your alcoholic beverage product Purchase may be held in an account for the benefit of the alcoholic beverage supplier in compliance with Applicable Law and Rules. Toast acts as a third-party technology provider to and facilitates payment processing on behalf of the Merchant, and has no responsibility or liability to you or any other person for any alcoholic beverage products you may purchase from a Merchant or for any Merchant's compliance with Applicable Law and Rules, including without limitation, local regulations regarding sale of alcohol. By making a Purchase through the Services for alcoholic beverage products, you represent and warrant that (i) if you are a U.S. consumer attempting to consume alcoholic beverages in the U.S., you are twenty-one (21) years of age or older and, if you are a Canadian consumer attempting to consume alcoholic beverages in Ontario and British Columbia, you are nineteen (19) years of age or older, (ii) you are not procuring alcoholic beverage products for a person under twenty-one (21) years of age in the U.S. or under nineteen (19) years of age in Ontario or British Columbia and, (iii) you will provide bona fide government issued photo identification evidencing your age.

#### 1.6 Closing your Account

You may close your Toast account at any time and without cost, but you will remain liable for any outstanding Purchases as well as any fees or other charges incurred. Toast will not issue refunds for amounts previously incurred through our Services once you close your account.

Guests can close their accounts by emailing [help@toasttakeout.zendesk.com](mailto:help@toasttakeout.zendesk.com). Please review our [Privacy Statement](#) for further information about our practices regarding your personal information.



In certain cases, we may not allow you to close your account, including but not limited to:

- to evade an investigation;
- you have open or pending Purchases or Payment Transactions; or
- if you owe money to Toast or a Merchant due to your use of the Services.

## 2. Data Privacy and Security

The privacy and security of your personal information is important to us. Toast's Privacy Statement describes what information we collect about you, how we may use personal information and the security measures we have taken to protect your personal information. We encourage you to read the Privacy Statement carefully, as it forms a binding part of these Terms of Service and contains important information about your rights.

## 3. Purchases

Toast makes available the Services and, either directly or through a third party service provider, processes Payment Transactions for Purchases on behalf of Merchants as the agent of the Merchants through the payment networks. When you make a Purchase, you authorize Toast, as agent for the Merchant, to submit the charge in the amount of the Purchase (including any gratuities, fees and taxes) to your Payment Method as well as any credits in connection with chargebacks, reversals, refunds or adjustments. Toast, as the agent of the Merchant, will assist the Merchant in submitting the Payment Transaction to the payment network and processing the Payment Transaction. Upon Toast receiving the proceeds of the transaction, your payment obligation to the Merchant will be deemed completed (except in the case of a later chargeback or reversal).

You must provide a valid Payment Method to pay for your Purchases made through any of the Services. You authorize Toast to confirm your Payment Method is in good standing with the issuing financial institution. In order to do so, Toast may obtain an authorization to charge your Payment Method for a Payment Transaction. This authorization may reduce your available funds balance by the authorization amount until the Payment Transaction is actually charged to your Payment Method and the proceeds are processed and settled. Please contact your Payment Method issuer if you have questions regarding the status of an authorization or of a charge to your Payment Method. You agree that Toast, on behalf of the Merchant, may resubmit a Payment Transaction for processing to a

payment network in the event a prior Payment Transaction was declined or returned.

If you choose to store Payment Method information with Toast via any of the Services for your convenience and use in future transactions, you agree that Toast may receive up-to-date information on your Payment Method information (such as card number or expiration date) through services available from the card networks and may update your Payment Method credentials stored with Toast (if you choose to store your Payment Method credentials) from time to time.

We may establish limitations concerning use of the Services, including without limitation individual or aggregate transaction limits on the dollar amount or number of Payment Transactions you may make within certain time periods. We may decline to process any Payment Transaction without any notice to you. We may delay processing of or hold or cancel processing of any Payment Transaction upon the direction of the Merchant or if we believe, in our sole discretion, that the transaction is invalid, suspicious, involves misconduct or fraud, or otherwise violates Applicable Law and Rules, these Terms of Service, or any other policies.

Payments made through the Services are also subject to the terms of your agreement with your Payment Method issuer. You are solely responsible for any charges or fees that may be imposed by your Payment Method issuer as a result of using the Services.

#### 4. Permitted Activities

By using the Services, you agree that:

- You will not use the Services in any way that violates Applicable Law and Rules, these Terms, or any other policies.
- You may only use the Services to make Purchases of a legitimate, bona fide product or service that is purchased from a Merchant. The Services may not be used to transfer money or process a Payment Transaction that is unrelated to a purchase of a product or service from a Merchant.
- The information that you upload or post in connection with the Services does not infringe on anyone else's intellectual property or proprietary rights or otherwise conflict with the law or the rights of others.
- You will not upload, post or otherwise transmit through the Services any content that contains any viruses, trojan horses, time bombs, or any other harmful programs or elements.

- You will not provide false information about yourself to us, impersonate any other person, collect information about other users, or otherwise attempt to mislead others about your identity or the truthfulness or accuracy of the data you transmit through the Services.
- You will not damage, disable, disrupt, overburden, interfere with, or attempt to gain unauthorized access to any portion of our Services, computer systems, servers or networks, or any other person's use and enjoyment of the Services.
- Toast may suspend or terminate your use of the Services at its sole discretion for any actual or suspected violation of these limitations or other applicable policies or rules referenced in these Terms of Service.

## 5. Fees

Toast may charge you a fee to make Purchases from Merchants using Toast Services. Such a fee may be referred to as an "Order Processing Fee", "Service Fee", "Convenience Fee" or other terminology. Such fee may be charged by and paid to Toast. We reserve the right to charge additional fees in the future. Any fees applicable to a Purchase or Payment Transaction you make will be clearly disclosed to you prior to the completion of your Purchase.

Merchants may charge you fees as well as taxes in addition to the price of the products or services you purchase. You may also be permitted to provide a gratuity. By making a Purchase through the Services, you agree to pay all such charges, including gratuities, fees and taxes. All amounts to be charged to your Payment Method associated with your Purchase will be displayed to you before you complete your Purchase.

## 6. Order Changes, Cancellation, Refunds and Customer Service

Merchants each set their own cancellation and refund policies. Once a Purchase has been made through the TakeOut App, any Digital Ordering feature, or a Point of Sale feature, you will need to contact the Merchant directly to inquire if you can make a change to or cancel the Purchase or whether you may receive a refund.

For questions or customer service regarding a Purchase or the product or service provided by a Merchant, please contact the Merchant directly. For the TakeOut App, each Merchant's contact information for customer service is available on its App listing. Toast is not responsible for any Merchant service issues or content errors or inaccuracies related to a Merchant's website, menu, or other materials.

For technical questions that relate to your use of Toast app, please email

[help@toasttakeout.zendesk.com](mailto:help@toasttakeout.zendesk.com).

## 7. Promotions

When you use the Toast TakeOut App, Digital Ordering, or other Toast Services, you may be eligible to use codes ("Promotion Codes") at checkout to receive promotional offers on purchases ("Promotions"), subject to any terms and conditions of the specific Promotion Code or Promotion, as displayed on our Websites, on the App, or related print, social media, or digital marketing materials. The promotional value may be issued by Toast or by a Merchant. Promotion Codes may not be redeemed for cash and are non-refundable and non-transferrable. Toast reserves the right to modify, suspend, terminate, or alter the terms of any Promotion Code or Promotion at any time. Promotion codes may not be reused in the event of a cancellation and/or refund.

### 7.1 Toast Cash

Toast offers Toast Cash as a way for Guests to have part or all of their meal paid through a promotional code ("Toast Cash"). Toast Cash is not cash, and does not represent prepaid or stored value. Toast Cash is not redeemable for cash or credit. Toast may, in its sole discretion, make offers for Toast Cash promotional codes ("promo codes") available to certain individuals, which offers and promo codes are subject to these Terms and the terms of the applicable offer. In order to receive a Toast Cash promo code, you must have a Toast account. If you qualify for a promotional offer for Toast Cash, your Toast Cash promo code(s) may be sent to you via email or SMS using contact information associated with your Toast account, or provided via the App. Toast Cash promo codes expire sixty (60) days from the day they are generated, or as otherwise set forth in the terms of the applicable offer. Each Toast Cash promo code you receive may have a different expiration period. Unless otherwise indicated in the offer terms, you can only use your Toast Cash promo code at checkout in the Toast TakeOut App and Online Ordering at participating Toast Merchants. Not all Toast Merchants accept Toast Cash promo codes.

Toast reserves the right to withdraw, limit, modify, cancel, or terminate any aspect of Toast Cash (including without limitation any Toast Cash promo code or offering and any associated terms) for any reason and at any time without notice, in Toast's sole discretion, without any liability to you. Void where restricted or prohibited by law. Toast Cash is not transferable, cannot be duplicated, and can only be used in accordance with these Terms and the specific terms provided by

Toast and in accordance with Applicable Law and Rules. You are responsible for paying any applicable taxes related to your use of any Toast Cash promo code. Toast has no obligation for payment of any taxes in connection with the distribution or use of any Toast Cash promo code. Toast Cash promo codes may not be applied towards taxes, fees, purchases of alcoholic beverages, or other certain menu items as designated by the Merchant. Unless otherwise indicated, Toast Cash promo codes are single use only and cannot be combined. Any use of Toast Cash is final and will not be refunded or returned.

## **8. Disclaimer of Warranties, Waiver and Limitation of Liability**

### **8.1 DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICES AND ALL INFORMATION, PRODUCTS AND OTHER CONTENT (INCLUDING THAT OF THIRD PARTIES) INCLUDED IN OR ACCESSIBLE FROM THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

NEITHER TOAST NOR ITS THIRD-PARTY PROVIDERS WILL BE LIABLE OR RESPONSIBLE FOR ANY PRODUCTS OR SERVICES PROVIDED BY MERCHANTS THAT ARE A CAUSE OF INJURY OR THAT ARE UNACCEPTABLE OR DO NOT MEET YOUR REQUIREMENTS OR EXPECTATIONS.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, TOAST AND ITS THIRD-PARTY PROVIDERS HEREBY EXPRESSLY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE SERVICES AND ALL INFORMATION, PRODUCTS AND OTHER CONTENT (INCLUDING THAT OF THIRD PARTIES) INCLUDED IN OR ACCESSIBLE FROM THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND QUALITY. TOAST RELIES UPON MerchantS TO PROVIDE ACCURATE ALLERGEN AND DIETARY INFORMATION AND GENERAL PRODUCT SAFETY. TOAST DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION ACCESSIBLE THROUGH THE SERVICES IS ACCURATE, COMPLETE, RELIABLE, CURRENT, OR ERROR-FREE, INCLUDING, WITHOUT LIMITATION, MENUS, NUTRITIONAL AND ALLERGEN INFORMATION, PHOTOS, FOOD QUALITY OR DESCRIPTIONS, PRICING, HOURS OF OPERATION, OR REVIEWS. ALL CONTENT IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE RELIANCE ON ANY INFORMATION PROVIDED THROUGH THE SERVICE IS

SOLELY AT YOUR OWN RISK, INCLUDING, WITHOUT LIMITATION, NUTRITIONAL AND ALLERGEN INFORMATION.

TOAST AND ITS THIRD-PARTY PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING (I) WHETHER THE SERVICES WILL MEET YOUR REQUIREMENTS; (II) THE RELIABILITY, AVAILABILITY, TIMELINESS, SUITABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES; (III) THE RESULTS YOU MAY OBTAIN BY USING THE SERVICES; (IV) WHETHER THE OPERATION OR USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; OR (V) WHETHER THE QUALITY OF THE SERVICE, OR PRODUCTS OR SERVICE, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM TOAST OR A THIRD PARTY THROUGH OR FROM THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

YOU ACKNOWLEDGE THAT NEITHER TOAST NOR ITS THIRD-PARTY PROVIDERS CONTROLS THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT NEITHER TOAST NOR ITS THIRD-PARTY PROVIDERS ARE RESPONSIBLE FOR ANY LIMITATIONS, DELAYS, OR OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. WITHOUT LIMITING THE FOREGOING, NEITHER TOAST NOR ITS THIRD-PARTY PROVIDERS WARRANTS OR GUARANTEES THAT ANY OR ALL SECURITY BREACHES OR ATTACKS WILL BE DISCOVERED, REPORTED OR REMEDIED, OR THAT THERE WILL NOT BE ANY SECURITY BREACHES BY THIRD PARTIES.

## 8.2 Waiver of Liability

You acknowledge and agree that the Merchant is the seller of the food, beverages and related products and services which you may order and pay for through TakeOut App. The Merchant is solely responsible for any and all damages, claims, liabilities, costs, injuries or illness caused in whole or in part by the Merchant. Merchant is also solely responsible for any unclaimed property liability which may arise from Purchases, including gift cards, paid for but not received by you.

### 8.3 LIMITATION OF LIABILITY

IN NO EVENT WILL TOAST BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, EVEN IF TOAST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN HAS FAILED ITS ESSENTIAL PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY LAW TOAST'S AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO ONE HUNDRED DOLLARS (\$100).

### 8.4 State Exemptions

Some states do not allow exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the above limitations or exclusions may not apply to you. IN SUCH STATES, TOAST'S LIABILITY OF WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

### 8.5 Reliance on Limitations

Each party acknowledges that the other party has entered into these Terms relying on the limitations of liability stated herein and that those limitations are an essential basis of the bargain between the parties.

## 9. Force Majeure

Toast will not be liable for any failure or delay resulting from any condition beyond its reasonable control, including but not limited to governmental action or acts of terrorism, earthquake, fire, pandemic, flood or other acts of God, labor conditions, power failures, and Internet disturbances.

## 10. Indemnification

You agree to defend, indemnify and hold harmless Toast and its directors, officers, employees, affiliates and agents from and against any and all third party claims, liability, damages, expenses and costs actions or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from (a) your breach of these Terms or any other policy; (b) your access to, use, or misuse of the Third-Party Content or Services; and (c) your infringement or infringement by any other user of your account, of any intellectual property or other right of any other

person. Toast will provide notice to you of any such claim, suit, or proceeding. Toast reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this Section. In such case, you agree to cooperate with any reasonable requests assisting Toast's defense of such matter.

## 11. Ownership of Content and Use of Trademarks

### 11.1. Ownership

Toast owns or has license to all rights, title, interest, copyright and other worldwide intellectual property and trade secret rights in and to the Services (including all derivatives or improvements thereof). You may voluntarily submit suggestions, enhancement requests, ideas, feedback, recommendations or other input about the Services ("Feedback") at any time. You irrevocably assign all right, title, interest and other worldwide intellectual property rights in and to the Feedback to Toast, Inc., and acknowledge that we are free to use, disclose, reproduce and otherwise exploit any and all Feedback provided by you relating to the Services in our sole discretion, entirely without obligation or restriction of any kind. Any rights not expressly granted herein are reserved by Toast.

### 11.2. User Content

You retain all rights, title and interest in and to any text, graphics, videos, images or other data that you upload to the Services ("User Content"). You grant to Toast a non-exclusive, royalty-free, fully paid-up, worldwide license to access, use, copy, modify (including the right to create derivative works of), display and transmit User Content for the purpose of our providing the Services and in accordance with our Privacy Statement. You are solely responsible for the accuracy, quality, content, and legality of User Content, the means by which User Content is acquired, and any transfer of User Content outside of the Services by you or any third-party authorized by you. You represent, warrant and covenant that you have all rights necessary to upload the User Content to the Services and to otherwise have such User Content used or shared, as applicable, in relation to the Services.

### 11.3. Third-Party Content

Through your use of the Services you may be presented with material provided by third parties, not owned or controlled by us, from our partners, Merchants, and/or from other users of the Services, including but not limited to links to websites or other materials, software, text, graphics, videos, images, or advertising content (collectively referred to as "Third-Party Content"). All Third-Party Content and the



Services are protected by United States and foreign intellectual property laws. Unauthorized use of the Services and/or Third-Party Content may result in violation of copyright, trademark, and other laws. Except as expressly provided herein, you have no rights in or to the Services or Third-Party Content, and you will not use, copy or display the Services or Third-Party Content except as permitted under these Terms. No other use of the Services or Third-Party Content is permitted without our prior written consent. You must retain all copyright and other proprietary notices contained in the Services and Third-Party Content. You may not sell, transfer, assign, license, sublicense, or modify the Third-Party Content or reproduce, display, publicly perform, make a derivative version of, distribute, or otherwise use the Third-Party Content in any way for any public or commercial purpose other than as permitted hereunder. The use or posting of any of the Third-Party Content on any other platform, or in a networked computer environment for any purpose is expressly prohibited. If you violate any part of these Terms of Service, your right to access and/or use the Third-Party Content and Services will automatically terminate.

#### 11.4. Monitoring and Removal of Content

We may not review, pre-screen or filter all User Content, or Third-Party Content, but we do reserve the right to delete or refuse to accept any User Content or Third-Party Content in our sole discretion. In addition, we have the right (but not the obligation) in our sole discretion to reject or delete any content that we reasonably consider to be in violation of these Terms or Applicable Law and Rules.

#### 11.5. Third-Party Content Precautions

We do not guarantee the accuracy, integrity or quality of any Third-Party Content, regardless of whether such products or services are designated as “certified,” “validated” or the like. Any interaction or exchange of information or data between you and any third-party is solely between you and such third-party. You should take precautions when downloading files from any platform to protect your computer from viruses and other destructive programs. If you decide to access any Third-Party Content, you fully assume the risk of doing so. Under no circumstances will Toast be liable in any way for any Third-Party Content, including liability for any errors or omissions in any Third-Party Content or for any loss or damage of any kind incurred as a result of the use of or reliance on any Third-Party Content posted, emailed, linked or otherwise transmitted via the Services.

#### 11.6. Trademarks

The trademarks, service marks, and logos of Toast (the “Toast Trademarks”) used and displayed on the Services are registered and unregistered trademarks or service marks of Toast. Other Toast product and service names located in the Services may be trademarks or service marks owned by a Merchant or other third-parties (the “Third-Party Trademarks”, and, collectively with the Toast Trademarks, the “Trademarks”). Nothing in these Terms of Service should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Trademark displayed in the Services without the prior written consent of Toast specific for each such use. The Trademarks may not be used to disparage Toast or the applicable third-party, Toast’s or third-party’s products or services, or in any manner that may damage any goodwill in the Trademarks. Except as described herein, the use of any Trademarks is prohibited without Toast’s prior written consent. All goodwill generated from the use of any Toast Trademark or Third-Party Trademark will inure to Toast’s, or the applicable Third Party’s benefit, as applicable.

## **12. Termination of the Terms of Service**

These Terms of Service continue to govern your use of the Services unless and until such time as you or we terminate your use of any applicable Service(s). Upon termination, you will lose access to the relevant Services, and we may delete any information stored regarding you or your transactions through the Services. Termination of your use of any of the Services does not relieve you of the obligation to pay for any Purchases made as well as related fees and charges already incurred. In the event of termination of your use of the Services by you or us, we will not provide any refunds for amounts previously paid through the Services.

Toast reserves the right, in its sole discretion, to limit, suspend, or terminate your Toast account and/or access to all or any part of the Services at any time and for any reason without notice to you and without liability to you or to any third party. Additionally, any of the Services, or any feature of portion thereof, may be modified, replaced, suspended, or terminated, without or notice at any time, in Toast’s sole discretion, without liability.

## **13. Electronic Communications (including E-Sign Disclosure and Consent)**

This section 13 describes how Toast delivers communications to you electronically. We may amend these terms from time to time, and if we make substantial changes, we will provide you with reasonable notice in accordance with any communication

preferences you have given to us, and by posting notice of the updates on our Website.

### 13.1. Consent for Electronic Communications

You agree and consent to receive electronically all communications, agreements, disclosures, notices and documents (collectively “Communications”) that we provide in connection with your Toast account and the Services we provide. We may at times be required to provide you with Communications in written form, which you agree to receive electronically instead of in paper form, including by sending via electronic mail to the email address you provide to us, or by posting notice or communicating with you via the Toast app or our website.

Communications include these Terms and any and all other agreements or policies to which you must agree in order to use the Services, including updates to those agreements and policies; payment authorizations and transaction receipts or confirmations customer service matters; and any other communication related to your use of the Services.

It is your responsibility to keep your email address accurate and up to date so that Toast can communicate with you. You can update the email address associated with your Toast account by logging in and accessing the Profile section within the Toast app or any Online Ordering page.

All Communications sent in electronic format will be considered to be in “writing and are considered received by you upon posting through the Website or Toast app, via push notifications to your device, or sending to you via electronic email or SMS, regardless of whether you have accessed that communication.

### 13.2. Consent to Contact Mobile Number

By voluntarily providing your mobile phone number to Toast or through any Toast Services, you confirm you are authorized to provide that number to Toast and agree that Toast may contact you at that number. If you provide a mobile number, you expressly agree that Toast may contact you using automated telephone call, and SMS or MMS messages at that phone number, and you hereby consent to receiving such communications for transactional, informational, and operational purposes.

### 13.3. Term of Consent

Your consent to receive electronic Communications is valid until and unless you revoke it. You may revoke your consent at any time, however, consent to

electronic Communications is a condition of some of our Services, and if you revoke it you will no longer be permitted to use the Services. If you wish to revoke your consent for electronic Communications, please contact [legal@toasttab.com](mailto:legal@toasttab.com).

#### 13.4. Methods of Agreement

You acknowledge and agree that by clicking on the “I Agree”, “Submit”, “Create Account” or similar button on the website, Online Ordering page, TakeOut App or other feature offered under our Services and associated with these Terms or with any other electronic document authorizing us to provide the Services to you, you are indicating your intent to sign these Terms and/or other applicable agreement(s). You also agree that clicking on these buttons on the website, Digital Ordering feature or TakeOut App shall constitute your electronic signature to these Terms or other such document displayed with the button(s) and relating to the Services. You further agree that your electronic signature on these Terms and any other document shall have the same legal effect under state and federal law as if you signed the documents in ink on paper.

#### 13A.4 Electronic Communications From Merchants

**Transactional SMS:** By using the Services and providing your email address and/or mobile phone number you consent to receive transactional text (SMS) messages and transactional email messages from Toast and the Merchants that you transact with. Such communications may include, but are not limited to, requests for secondary authentication, receipts, reminders, order updates, and notifications regarding updates to your account or account support.

**Marketing SMS:** Merchants that you transact with may also send you marketing and promotional communications, and valid consent will be obtained where required. Such communications may be from the Merchant you transacted with and/or from other businesses within that Merchant’s restaurant group. Your consent to receive marketing SMS messages is not a condition of purchase.

**Short-Code SMS:** Certain Toast Services, including but not limited to Toast Loyalty, Order & Pay, Pay Card, Order Notifications, and/or other Toast Services may utilize certain short code numbers for communications. When you provide your phone number through the signup flow for these Toast Services, you are opting-in to receive text messages that will use the SMS short code 86278, which code may change from time-to-time without prior notice (the “SMS Short-Code”). When you opt in for these programs you will receive a text message to confirm your signup for notifications related to the applicable Toast Services. If you no

longer wish to receive these text messages, text "STOP" to the SMS Short-Code. After you send the message "STOP", you will receive a reply message confirming that you have been unsubscribed. Please note that by replying "STOP," you will be unsubscribed from receiving text messages for all of the Toast Services using the SMS Short Code. If you would like to re-subscribe to receive notifications for any of the relevant Toast Services, you can text or reply to the SMS Short-code with the word "Start". If you need assistance with the programs utilizing SMS Short-Code you can reply to the SMS Short-Code with the keyword HELP, or you can get help directly by emailing [sms@toasttakeout.zendesk.com](mailto:sms@toasttakeout.zendesk.com)

**General:** Call and text message communications may be generated by automatic telephone dialing systems. Standard message and data rates applied by your cell phone carrier may apply to the text messages we send you. Message frequency varies. Text HELP at any time for help. You may opt-out of text messages by replying STOP. You further understand and agree that you may have to opt-out for notifications related to a specific Toast Service for which you have agreed to receive text messages, but for which you no longer wish to receive them. You acknowledge and agree that you may continue to receive text messages for a short time while your opt-out request is processed. Additionally, note that you may need to separately opt -out of marketing text messages and transactional text messages, as these may be sent by different services. You may opt-out of receiving marketing or promotional email communications we send by following the unsubscribe options on such emails. Merchants control and are responsible for the content in all Merchant Communications, which shall be deemed "Third-Party Content" as defined in Section 11.3 of these Terms, and Toast does not take any responsibility or accept any liability in connection therewith. Merchants are also responsible for ensuring that Merchant Communications are only sent where legally required consent has been obtained, and Toast does not take any responsibility or accept any liability in connection therewith. You acknowledge that opting out or unsubscribing from receiving communications may impact your use of the Buyer Services.

## 14. Arbitration

### 14.1. Agreement to Arbitrate

This Section 14 is referred to as the Arbitration Agreement. You agree that any and all disputes or claims that have arisen or may arise between you and Toast, whether arising out of or relating to these Terms of Service or in connection with your use of the Services, shall be resolved exclusively through final and binding arbitration, rather than a court, in accordance with the terms of this Arbitration

Agreement, except that you may assert individual claims in small claims court, if your claims qualify. You agree that, by agreeing to these Terms, you and Toast are each waiving the right to a trial by jury or to participate in a class action. Your rights will be determined by a neutral arbitrator, not a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. Notwithstanding the foregoing, this Arbitration Agreement shall not preclude either party from pursuing a court action for the sole purpose of obtaining a temporary restraining order or preliminary injunction in circumstances in which such relief is appropriate, provided that any other relief shall be pursued through an arbitration proceeding pursuant to this Arbitration Agreement.

#### 14.2. Prohibition of Class and Representative Actions and Non-Individualized Relief

You and Toast agree that each may bring claims against the other only on an individual basis and not as plaintiff or class member in any purported class or representative action or proceeding. Unless both you and Toast agree otherwise, the arbitrator may not consolidate or join more than one person's or party's claims and may not otherwise preside over any form of a consolidated, representative, or class proceeding. Also, the arbitrator may award relief (including monetary, injunctive, and declaratory relief) only in favor of the individual party seeking relief and only to the extent necessary to provide relief necessitated by that party's individual claim(s).

#### 14.3. Pre-Arbitration Dispute Resolution

Most concerns can be resolved quickly and to all parties' satisfaction by emailing Toast's Customer Care team at [support@toasttab.com](mailto:support@toasttab.com). If such efforts prove unsuccessful, a party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to Toast should be sent to Toast at 401 Park Drive, Suite 801, Boston, MA 02215, Attn: General Counsel. The Notice must (i) describe the nature and basis of the claim or dispute and (ii) set forth the specific relief sought. If you and Toast do not resolve the claim within sixty (60) calendar days after the Notice is received, you or Toast may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Toast or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Toast is entitled.

#### 14.4. Arbitration Procedures

Arbitration will be conducted by a neutral arbitrator in accordance with the American Arbitration Association's ("AAA") rules and procedures, including the

AAA's Commercial Arbitration Rules (collectively, the "AAA Rules"), as modified by this Arbitration Agreement. If there is any inconsistency between any term of the AAA Rules and any term of this Arbitration Agreement, the applicable terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. All issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement. The arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under these Terms of Service and Applicable Law and Rules. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons. Unless you and Toast agree otherwise, any arbitration hearings will take place in a reasonably convenient location for both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination shall be made by the AAA. If your claim is for \$10,000 or less, Toast agrees that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

#### 14.5. Costs of Arbitration

Payment of all filing, administration, and arbitrator fees will be governed by the AAA Rules, unless otherwise provided in this Arbitration Agreement. Any payment of attorneys' fees will be governed by the AAA Rules.

#### 14.6. Confidentiality

All aspects of the arbitration proceeding, and any ruling, decision, or award by the arbitrator, will be strictly confidential for the benefit of all parties.

#### 14.7. Severability

If a court or the arbitrator decides that any term or provision of this Arbitration Agreement other than Sub-Section 14.1 above is invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Arbitration Agreement shall be

enforceable as so modified. If a court or the arbitrator decides that any of the provisions of Sub-Section 14.1 is invalid or unenforceable, then the entirety of this Arbitration Agreement shall be null and void. The remainder of these Terms will continue to apply.

#### **15. Survival**

Upon termination of your use of the Service or these Terms for any reason, in addition to this section, the following sections shall survive termination: Section 1.7 (Merchant Responsibilities), 5 (Fees), 8 (Disclaimer of Warranties, Waiver and Limitation of Liability), 10 (Indemnification), 11 (Ownership of Content, Use of Trademarks), 12 (Termination), 14 (Arbitration), 17 (Governing Law), and 18 (Miscellaneous).

#### **16. Assignment**

You may not assign these Terms or any rights or obligations hereunder, by operation of law or otherwise, without our prior written consent and any attempted assignment may be void. We reserve the right to freely assign these Terms and the rights and obligations hereunder, to any third party without notice and consent. Subject to the foregoing, these Terms shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

#### **17. Governing Law**

Any action, claim, or dispute related to these Terms of Service will be governed by the laws of the Commonwealth of Massachusetts, excluding its conflicts of law provisions, and controlling U.S. federal law. The United Nations Convention on Contracts for the International Sale of Goods and Uniform Computer Information Transactions Act will not apply to these Terms of Service.

#### **18. Miscellaneous**

If any provision of these Terms is found to be invalid by any court having competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of these Terms, which will remain in full force and effect. Failure of Toast to act on or enforce any provision of these Terms will not be construed as a waiver of that provision or any other provision herein. No waiver will be effective against Toast unless made in writing, and no such waiver will be construed as a waiver in any other or subsequent instance. Except as expressly agreed by Toast and you, these Terms, including any Toast policies governing the Services referenced herein, constitute the entire agreement between you and



Toast with respect to the subject matter hereof, and supersedes all previous or contemporaneous agreements, whether written or oral, between you and Toast with respect to the subject matter. The section headings are provided merely for convenience and will not be given any legal import.

## Ready to get started?

Talk to a restaurant expert today and learn how Toast can help your business.

Get A Demo



Sales: (857) 301-6002

Customer Care: (617) 682-0225

333 Summer Street

Boston, MA 02210



Get A Demo

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